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**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF TEXAS**

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DAVONTAY JOHNSON,

Plaintiff,

*versus*

UNKNOWN PRISON STAFF, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:21-CV-550

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING THE  
MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

Plaintiff, Davontay Johnson, an inmate confined at the Estelle Unit with the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Defendants Patricia Banks, Donna Jones, Jajuan Davis, Marissa Velazco, William Ayer, and K. Smith.

The court has received and considered the Reports and Recommendations of the magistrate judge filed pursuant to such order, along with the record, and pleadings (#s 61 & 62). Specifically, the magistrate judge recommends Plaintiff’s claims against Defendants Jajuan Davis, Marissa Velazco, William Ayer, and K. Smith be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) (#61). As to Plaintiff’s claims against Defendants Patricia Banks and Donna Jones, the magistrate judge recommends they be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(5) and 4(m) (#62). Plaintiff filed objections to the Report and Recommendation (#41). This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

Plaintiff offers no substantive objections to the magistrate judge's report recommending Plaintiff's claims against Defendants Davis, Velazco, Ayer, and K. Smith be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). Plaintiff's chief argument is that the court should consider him a pauper and order the Marshal to serve the defendants. In addition, Plaintiff argues that because his claims have merit, the court should overlook the errors in service as to Defendants Banks and Jones and not dismiss this case.

The magistrate judge has addressed Plaintiff's pauper status and this court can find no error in that determination (#50). The record reflects Plaintiff paid the full \$402.00 filing fee on September 1, 2021. For that reason, Plaintiff is not considered a pauper.<sup>1</sup> As to Plaintiff's invitation to overlook the procedural errors in service as to Defendants Banks and Jones, the court declines that invitation. Plaintiff has had more than two years to properly serve the defendants and has failed to show good cause for failing to properly serve the Defendants within that extended time frame.

### **ORDER**

Accordingly, Plaintiff objections (#62) are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the reports of the magistrate judge are **ADOPTED**. A final judgment will be entered in accordance with the recommendation of the

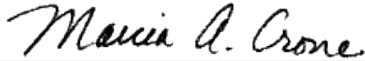
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<sup>1</sup> Plaintiff does not argue he is a seaman, nor would the record support such an assertion.

magistrate judge.

**Signed this date**

**Sep 15, 2023**

A handwritten signature in cursive script, reading "Marcia A. Crone".

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MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE